

BRB No. 98-0117 BLA

OAKLEY J. HOLBROOK)
(Widow of WILLIAM HOLBROOK))
)
 Claimant-Petitioner)
)
 v.)
)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order of Pamela Lakes Wood,
Administrative Law Judge, United States Department of Labor.

Oakley J. Holbrook, Coeburn, Virginia, *pro se*.¹

Helen H. Cox (Marvin Krislov, Deputy Solicitor for National Operations;
Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy
Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel
for Administrative Litigation and Legal Advice), Washington, D.C., for
the Director, Office of Workers' Compensation Programs, United States
Department of Labor.

Before: SMITH, BROWN and McGRANERY, Administrative Appeals
Judges.

PER CURIAM:

¹Ron Carson, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested on behalf of claimant that the Board review the administrative law judge's decision. See *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

Claimant,² without the assistance of counsel, appeals the Decision and Order (97-BLA-0145) of Administrative Law Judge Pamela Lakes Wood (the administrative law judge) denying benefits on a survivor's claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). The administrative law judge dismissed claimant's duplicate survivor's claim in accordance with 20 C.F.R. §725.309. On appeal, claimant generally challenges the administrative law judge's dismissal of her survivor's claim. The Director, Office of Workers' Compensation Programs, responds, urging affirmance of the administrative law judge's Decision and Order.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised on appeal to be whether the Decision and Order below is supported by substantial evidence. *See McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The pertinent procedural history of this case is as follows: Claimant filed her initial survivor's claim for benefits on February 1, 1980. Director's Exhibit 14. This survivor's claim was denied by the Department of Labor (DOL) on July 17, 1980 and October 22, 1981. *Id.* Inasmuch as claimant did not pursue this survivor's claim any further, the denial became final. Claimant filed her second survivor's claim for benefits on November 10, 1983. *Id.* On August 1, 1986, Administrative Law Judge Phillip J. Lesser issued a Decision and Order Dismissing Claim. *Id.* Judge Lesser's dismissal was based on the fact that claimant's November 10, 1983 application for survivor's benefits was a duplicate survivor's claim. *Id.* The dismissal became final because claimant did not pursue this survivor's claim any further. Claimant filed her third survivor's claim for benefits on September 30, 1987. *Id.* This survivor's claim was denied by the DOL on March 23, 1988. *Id.* Because claimant did not pursue this survivor's claim any further, the denial became final. Claimant filed her fourth survivor's claim for benefits on June 29, 1989. *Id.* On March 16, 1992, Administrative Law Judge Joan Huddy Rosenzweig issued a Decision and Order Dismissing Claim. *Id.* Judge Rosenzweig's dismissal was based on the fact that

²Claimant is the widow of the deceased miner, William Holbrook, who died on January 26, 1980. Director's Exhibits 1, 3, 14.

claimant's June 29, 1989 application for survivor's benefits was a duplicate survivor's claim. *Id.* The Board affirmed Judge Rosenzweig's dismissal of the survivor's claim. *Holbrook v. Director, OWCP*, BRB No. 92-1378 BLA (Feb. 23, 1994)(unpub.). Since claimant did not pursue this survivor's claim any further, the dismissal became final. Claimant filed her most recent survivor's claim for benefits on August 15, 1995. Director's Exhibit 1.

The administrative law judge correctly stated that "[t]he first of Claimant's duplicate [survivor's] claims was filed [on] November 10, 1983, over two years from the date of the denial of benefits" of claimant's original 1980 survivor's claim. Decision and Order at 5. The administrative law judge also correctly stated that none of the duplicate survivor's claims had been filed within one year from the date of the previous denial of benefits. *Id.* Pursuant to 20 C.F.R. §725.309(c) and (d), if an earlier survivor's claim is finally denied, a subsequent survivor's claim must also be denied based on the prior denial unless claimant's subsequent survivor's claim is considered a petition for modification, thereby satisfying the requirement of 20 C.F.R. §725.310. *See Mack v. Matoaka Kitchekan Fuel*, 12 BLR 1-197 (1989). Thus, since claimant's 1995 survivor's claim was filed more than one year after the final denial of claimant's original 1980 survivor's claim, thereby not meeting the requirement of 20 C.F.R. §725.310, the administrative law judge properly denied benefits. *See Mack, supra.*

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge